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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,281	11/26/2003	Jean-Francois Laffort	0515-1068	5466
466	7590	08/22/2006	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			STULII, VERA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,281

Applicant(s)

LAFFORT, JEAN-FRANCOIS

Examiner

Vera Stulii

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/26/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/26/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for tannins, does not reasonably provide enablement for all constituents. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to apply the invention commensurate in scope with these claims. Specification discloses supplementing alcoholic beverage with tannins. The claim broadly recites supplementing an alcoholic beverage with any constituents.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1 is indefinite and vague because it is not clear what active steps process for supplementing alcoholic beverage with constituents are claimed. While the claim recites several processing conditions, the steps involved are not clear.

Additionally, claim 1 has the following problems:

lines 1-3, the step of supplementing is confusing because it is not clear whether the supplementing is during production or during beverage being in the container; the claim seems to indicate both.

line 6 recites "the measured or estimated difference" limitation. There is insufficient antecedent basis for this limitation in the claim, because the claim does not set forth any "difference".

line 7, the phrase "of the content" is confusing because it is not clear what content applicant is referring to.

line 8, what does applicant mean by "the best essence"?

line 9, reference to "supplemental additions" is not clear, because the claim has not set forth any supplemental additions.

line 11, what does "the nature" refers to?

line 12, the meaning of "the decrease of degradation is not clear", because it is not known where this decrease takes place. Also, what does applicant mean by degradation, is it the constituents that are added? In addition, there is insufficient antecedent basis for this limitation in the claim, because the claim does not set forth any decrease of constituents.

lines 13-14, it is not clear what is meant by "to obtain a curve of concentration in constituents...". Does it mean to obtain concentrations corresponding to a graphical representation of function recited in claim 1?

line 15 has the same problem as line 8.

Claim 2 has the following problems:

lines 1-2, the phrase "more particularly" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

lines 2-3, the phrase "or the like" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

line 4 recites "said initial addition" limitation. There is insufficient antecedent basis for this limitation in the claim, because neither claim 1 nor claim 2 set forth any "initial addition".

lines 5-6 recite "the ultimate addition" limitation. There is insufficient antecedent basis for this limitation in the claim, because neither claim 1 nor claim 2 set forth any "ultimate addition".

Claim 3 line 2 recites "the second addition" limitation. There is insufficient antecedent basis for this limitation in the claim, because neither claim 1 nor claim 2 set forth any "second addition".

Claim 3 has the same problem as claim 2 regarding "said initial addition" and "the ultimate addition" limitations.

Claim 4 line 2 recites "the ultimate content" limitation. There is insufficient antecedent basis for this limitation in the claim, because neither claim 1 nor claim 2 set forth any "ultimate content". In line 4, what does the "end of production" refers to?

Claim 5, does applicant intend for a Markush group? If so, the proper language should be "selected from the group consisting of".

Claim 6, it is not clear how the addition is in the form of powder, granular material, etc.

Claim 7 has the following problems:

lines 1-3 has the same problem as claim 2 regarding the "more particularly" and "or the like" phrases.

line 3 recites "a hermetic vat". Is this the same as "production container"? If so, then the reference to "production container" is not consistent throughout the claims.

line 4 recites "the various additions" limitation. There is insufficient antecedent basis for this limitation in the claim, because claim 1 does not set forth any "various additions".

Claim 9 lines 3-4, it is not clear what "release from a compound" process and "mixture of products" process applicant is referring to.

Claim 10 has the same problem as claim 2 regarding "the initial addition limitation".

Claim 10 lines 3-4 recites "the ultimate quantity" limitation. There is insufficient antecedent basis for this limitation in the claim, because neither claim 1 nor claim 7 set forth any "ultimate quantity".

The term "a suitable quantity" in claim 12 line 4 is a relative term which renders the claim indefinite. The term "suitable quantity" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree (i.e.

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volume or concentration), and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 13 has the same problem as claim 5.

Claim 14 has the same problem as claim 9

In claims 2, 4, 8, and 10, range limitations are not recited in the appropriate format.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-6, 11, and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarraud et al (DE 353,735) in view of Feries (US 6,479,081) and Meunier Yves (FR 2,798,936).

Jarraud et al (DE 353,735) disclose that high quality wines and spirits are stored in oak barrels in order to achieve their best qualities. Jarraud also disclose use of extract from oak wood that contains most of the necessary constituents in order to improve and clarify wines and spirits and compensate for the lack of tannins. Jarraud teach adding extract to wine and spirits whenever alcoholic beverage is stored in the container other than new oak barrel.

Jarraud et al. do not disclose specific amounts of extract added and determining concentration as function of the container. Jarraud et al. is also silent about multiple additions of extract, specific group of tannins, or form of extract added.

Feries (US 6,479,081) discloses methods of obtaining tannin, resulting tannin and use of tannin. Feries discloses "in oenology, tannins are used for the clarification of wines because they exhibit a strong affinity to bind to proteins. They are also used for improving the organoleptic qualities and the taste characters of wines" (Col.1, lines 32-35). Feries also discloses that "tannins extracted from chestnut tree, oak tree and nut galls of various trees, which are hydrolysable tannins, are mainly used" (Col.1, lines36-38). Feries also discloses that "gallotannins of the hydrolysable tannin group consist of polymers of glucose and of gallic acid and the ellagitannins of the same group consist of a polymer of glucose and of ellagic, gallic and/or hexahydroxydiphenic acids" (Col.1, lines 28-32).

Meunier Yves (FR 2,798,936) discloses molecular transfer from wood into liquid, enhancing organoleptic qualities and maturity of wine and spirits by immersing wood into wine or spirit stored in a container. Meunier Yves discloses the optimal transfer of

tannins from wood barrel into alcoholic beverage stored occurs in new oak barrels. Meunier Yves discloses that after oak wood barrel has been used for three times molecular transfer of tannins from wood barrel into wine does not occur. Meunier Yves teaches immersing or soaking wood in alcoholic beverage in order to compensate for the lack of tannin transfer in old wood barrels or non-wood containers.

In view of the known concept of decrease of tannin transfer in used oak barrels as shown by the prior art, it would have been obvious to add tannins to alcoholic beverages such as wine or spirits (brandy) in order to compensate for decrease of tannins during storage. The particular amounts of tannin added would be a matter of routine experimentation. It would have been obvious to determine the optimal amount of tannins to be added that correspond to known concentration of tannins in new oak barrels. It would also have been obvious to perform multiple addition of tannins until the desire concentration is reached. It would have also been obvious to use gallotannins of the hydrolysable tannin group consist of polymers of glucose and of gallic acid and the ellagitannins extracted from oak tree, since it is well known to use this group of tannins in oenology and compensate for the lack of tannin transfer from the new oak barrels. It would have been a matter of preference to use any form of tannins including powder, granular material or tablet in the supplementing process.

Claims 7-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jarraud et al (DE 353,735) in view of Feries (US 6,479,081), Meunier Yves (FR 2,798,936 as applied to claims 1-6, 11, and 13-14 above, and further in view of Moulton (GB 468770).

Jarraud is silent about introduction of oxygen in a production container and methods of such introduction.

Moulton (GB 468770) discloses treatment of wines or cordials (line 14) by aeration (Abstract) using oxygen (line 38). Moulton teaches " elimination by oxygenation, of all substances which would subsequently produce a deposit" (lines 57-61). Moulton also teaches that "the air emulsion can also be obtained to advantage after the addition of tannin, and it will greatly further the action of this product, by permitting to obtain in a few hours and effect which requires several days with the known processes. (lines 32-37).

In view of the known concept of decrease of tannin transfer in used oak barrels as shown by the prior art, it would have been obvious to treat wine or cordials (brandy) with oxygen by aeration method in order to form an emulsion and optimize transfer process as taught by Moulton.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS *H. Stuln* 08/18/06

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